

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

---

CORY O'DELL DERRICK, #103943,

Plaintiff,

Case Number: 20-cv-11378

v.

MATTHEW RICE, ET AL.,

Defendants.

---

**OPINION AND ORDER OF SUMMARY DISMISSAL WITHOUT PREJUDICE**

Cory O'Dell Derrick is incarcerated at the Isabella County Correctional Facility in Mt. Pleasant, Michigan. He has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff names five law enforcement officers as defendants: Matthew Rice, DJ Mattice, Hoskins, Jason Powell and Timothy Standen. The complaint concerns circumstances surrounding Plaintiff's arrest on May 29, 2019 in Mt. Pleasant, Michigan. The complaint is duplicative of a previously filed complaint and will be dismissed without prejudice.

Derrick filed the instant complaint on May 12, 2020. Derrick claims that, on May 29, 2019, Rice, a Michigan State Police lieutenant, illegally detained and sexually assaulted him. He also alleges that all of the defendants fabricated evidence and engaged in an unlawful search and seizure related to a traffic stop and his subsequent arrest on May 29th.

## II. BACKGROUND

In October 2019, Derrick filed a complaint under 42 U.S.C. § 1983 in this court also concerning his May 29, 2019 arrest. *See Derrick v. Rice, et al.*, No. 19-cv-13109. The complaint named four defendants, including three law enforcement officers named in the instant complaint -- Jason Powell, John Rogers and Matthew Rice.<sup>1</sup> (ECF No. 1.) The complaint raised numerous claims including these: (1) Powell, a Michigan State Police detective, provided false information in his affidavit to obtain a search warrant, intimidated a defense witness, and performed an unlawful traffic stop; (2) Rogers, also a Michigan State Police detective, fabricated evidence in support of a search warrant; and (3) Rice sexually assaulted Derrick in the presence of Powell. That case remains pending.

## III. DISCUSSION

A complaint is duplicative and subject to dismissal if the claims, parties and available relief do not significantly differ from an earlier-filed action. *See Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir. 1993) (affirming district court's dismissal of case as duplicative where the court found no significant differences between the claims, parties and available relief); *Mansbach v. Prescott, Ball & Turben*, 598 F.2d 1017, 1030 (6th Cir. 1979) (finding that claims arising out of the same facts would be duplicative and should not be the subject of two separate actions). Although complaints may not "significantly differ," they need not be identical. *See, e.g., Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988) (holding that a complaint was duplicative although different

---

<sup>1</sup> The court dismissed the fourth named defendant, M.I.N.T. (a special investigation unit of the Michigan State Police), on the ground that, as an agency of the state of Michigan, it is entitled to Eleventh Amendment immunity. (ECF No. 7.)

defendants were named because it “repeat[ed] the same factual allegations” asserted in the earlier case).

Here, there is substantial overlap between these two pending actions. They arise from the same set of facts and all of the defendants in the first case are named in the instant complaint. The court finds that the pending action is duplicative of the earlier-filed case. To the extent that Derrick seeks to raise additional, related claims not already before the court in the earlier-filed complaint, he may seek to do so by following the requirements of Federal Rule of Civil Procedure 15.

#### **IV. CONCLUSION**

Accordingly, IT IS ORDERED that the instant complaint is DISMISSED WITHOUT PREJUDICE.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: June 11, 2020

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 11, 2020, by electronic and/or ordinary mail.

S/Lisa Wagner  
Case Manager and Deputy Clerk  
(810) 292-6522